

of Borrower, from funds appropriated for that purpose, the principal and interest charges that become due and payable on the unpaid balance of the guaranteed portion of the Guaranteed Obligation, if DOE finds that:

(a) The Borrower:

(1) Is unable to make the payments and is not in default; and

(2) Will, and is financially able to, continue to make the scheduled payments on the remaining portion of the principal and interest due under the non-guaranteed portion of the debt obligation, if any, and other debt obligations of the project, or an agreement, approved by DOE, has otherwise been reached in order to avoid a payment default on non-guaranteed debt.

(b) It is in the public interest to permit Borrower to continue to pursue the purposes of the project;

(c) In paying the principal and interest, the Federal government expects a probable net benefit to the Government will be greater than that which would result in the event of a default;

(d) The payment authorized is no greater than the amount of principal and interest that Borrower is obligated to pay under the terms of the Loan Guarantee Agreement; and

(e) Borrower agrees to reimburse DOE for the payment (including interest) on terms and conditions that are satisfactory to DOE and executes all written contracts required by DOE for such purpose.

§ 609.14 Full faith and credit and incontestability.

The full faith and credit of the United States is pledged to the payment of all Guaranteed Obligations issued in accordance with this part with respect to principal and interest. Such guarantee shall be conclusive evidence that it has been properly obtained; that the underlying loan qualified for such guarantee; and that, but for fraud or material misrepresentation by the Holder, such guarantee will be presumed to be valid, legal, and enforceable.

§ 609.15 Default, demand, payment, and collateral liquidation.

(a) In the event that the Borrower has defaulted in the making of required

payments of principal or interest on any portion of a Guaranteed Obligation, and such default has not been cured within the period of grace provided in the Loan Guarantee Agreement and/or the Loan Agreement, the Eligible Lender or other Holder, or nominee or trustee empowered to act for the Eligible Lender or other Holder (referred to in this section collectively as “Holder”), may make written demand upon the Secretary for payment pursuant to the provisions of the Loan Guarantee Agreement.

(b) In the event that the Borrower is in default as a result of a breach of one or more of the terms and conditions of the Loan Guarantee Agreement, note, mortgage, Loan Agreement, or other contractual obligations related to the transaction, other than the Borrower’s obligation to pay principal or interest on the Guaranteed Obligation, as provided in paragraph (a) of this section, the Holder will not be entitled to make demand for payment pursuant to the Loan Guarantee Agreement, unless the Secretary agrees in writing that such default has materially affected the rights of the parties, and finds that the Holder should be entitled to receive payment pursuant to the Loan Guarantee Agreement.

(c) In the event that the Borrower has defaulted as described in paragraph (a) of this section and such default is not cured during the grace period provided in the Loan Guarantee Agreement, the Secretary shall notify the U.S. Attorney General and, subject to the terms of any applicable Intercreditor Agreement, may cause the principal amount of all Guaranteed Obligations, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Loan Guarantee Agreement, to become immediately due and payable by giving the Borrower written notice to such effect (without the need for consent or other action on the part of the Holders of the Guaranteed Obligations) and may exercise any other remedies available under the applicable agreements. In the event the Borrower is in default as described in paragraph (b) of this section, where the Secretary determines in writing that such a default has materially affected the rights of